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STATE OF MAINE
ONE HUNDRED AND THIRTIETH LEGISLATURE
COMMITTEE ON VETERANS AND LEGAL AFFAIRS

TO: Senator Anne Carney, Senate Chair
 Representative Thom Harnett, House Chair
 Joint Standing Committee on Judiciary

FROM: Senator Louis J. Luchini, Senate Chair *LL*
 Representative Christopher J. Caiazzo, House Chair *CC*
 Joint Standing Committee on Veterans and Legal Affairs

DATE: June 3, 2021

RE: Public records exception review LD 1352

The Joint Standing Committee on Veterans and Legal Affairs requests the Joint Standing Committee on Judiciary's review, pursuant to 1 M.R.S. §434, of a public records exception included in the majority committee amendment to LD 1352, *An Act To Regulate Sports Betting*.

On April 30, 2021, the Veterans and Legal Affairs Committee held a public hearing on LD 1352 as well as several other proposals to regulate sports betting, including LD 1537, *An Act To Ensure Proper Oversight of Sports Betting in the State*. At the work session on May 26, 2021, a the majority (7 members) voted to pass LD 1352 as amended. Three members of the committee voted in favor of slightly different amendment while two members of the committee voted in favor of yet another slightly different amended to the bill. One member of the committee opposed the bill.

Although they differ in other respects, the majority and each of the minority committee amendments to LD 1352 create three new identical public records exceptions. Although we do not at this time have available a copy of the final majority report amendment to LD 1352, as this memo explains, the first two of these confidentiality provisions were included in LD 1352 and have not been substantively changed by the amendment while the third confidentiality provision was included in LD 1527 and also has not been substantively changed by the amendment.

It is worth noting that, with the exception of the third new confidentiality provision, these new public records exceptions were included in the majority committee amendment to LD 553 in the 129th Legislature and were reviewed favorably by the Judiciary Committee. Ultimately, the Governor's veto of that sports betting legislation was sustained.

1. *Criminal history information.* The first new public records exception, set forth in 8 M.R.S.A. §1204(3)(G)¹ on page 6 of LD 1352, renders confidential all criminal history information obtained by the Director of the Gambling Control Unit from the Maine Criminal Justice Information System and the Federal Bureau of Investigation—including fingerprint-based criminal history record information—in connection with an application for a sports wagering license. Section 1204 requires criminal history record information to be obtained from a license applicant as well as the persons' who have control of the applicant, as defined in §1204(2), when an applicant requests a license to operate in-person or internet-based sports wagering (either a "facility sports wagering license" or a "mobile sports wagering license"), a license to sell or lease sports wagering equipment to licensed operators (a "supplier license"), a license to conduct sports wagering on behalf of a licensed operator (a "management services license") or a license to be engaged directly in sports wagering-related activities as an employee of a facility sports wagering licensee (an "occupational license"). The public records exception in §1204(3)(G) mirrors several public records exceptions in current Maine law for fingerprint-based criminal history information obtained in connection with other types of professional or business license applications. *See, e.g.,* 32 M.R.S.A. §2111(1)(F) (rendering confidential all criminal history information obtained by the State Board of Nursing regarding applicants for nursing licenses).
2. *Child support registry information.* The second new public records exception, set forth in 8 M.R.S.A. §1214(10)² on page 16 of LD 1352, renders confidential certain information used in connection with the interception of sports wagering winnings to pay liquidated child support debt. Under §1214, a licensed sports wagering operator must collect the name, address, date of birth and social security number of any person whose sports wagering winnings exceed the amount for which the operator must file a Form W-2G with the U.S. Internal Revenue Service. The operator must use this information to check a secure registry containing information regarding individuals who owe an outstanding child support debt that has been liquidated by a court or an administrative order. If the registry indicates that the winner owes such a debt, the winnings must be intercepted and sent to the Department of Health and Human Services. Under §1214(10), both the winner's personally identifying information collected by the sports wagering operator and the information in the registry is confidential and may be used only for the purposes of child support interception. A DHHS employee, registry operator employee or employee of the licensed sports wagering operator who knowingly or intentionally discloses the information commits a civil violation punishable by a fine of up to \$1,000. This public records exception mirrors the public records exceptions in current Maine law for information related to the interception of pari-mutuel winnings and slot machine and table game winnings to pay liquidated child support debt. *See* 8 M.R.S.A. §300-B(10); 8 M.R.S.A. §1066(10).
3. *Abnormal wagering activity information.* Although the third public records exception was not included in the original text of LD 1352, it derives from §1215 on pages 15-16 of LD 1527 and was incorporated, without change, in each of the committee amendments to LD 1352.³ Under §1215(1), a facility sports wagering licensee (facility operator) and a mobile sports wagering licensee (mobile operator) must report abnormal wagering activity, patterns of wagers that give rise to a concern about the integrity of a sports event and "any other

¹ This confidentiality provision will be renumbered §1204(3)(H) in each amendment to LD 1352, but will otherwise be identical to §1204(3)(G) in the original bill.

² This confidentiality provision will be renumbered §1217(10) in each amendment to LD 1352, but will otherwise be identical to §1214(10) in the original bill.

³ Section 1215 of LD 1527 will likely also be numbered §1215 in each amendment to LD 1352.

conduct that corrupts a wagering outcome of the sports event for purposes of financial gain, including match fixing” both to the Director of the Gambling Control Unit and to the relevant sports governing body. The sports governing body (*i.e.*, the league) may provide information to the director—for example, information on confidential league policies as well as details regarding league operations, the league’s security protocols and any investigations by the league of its personnel related potential match fixing or other corrupt conduct—to assist the Director in investigating or preventing abnormal wagering activity. Under §1215(3), the director must maintain the confidentiality of any information provided by the sports governing body related to abnormal wagering activity investigations “unless disclosure is otherwise required by the director or by law, or unless the sports governing body consents to disclosure.”

Reviewing the statutory criteria for the three proposed exception to public records, we would comment for the majority (and minority) as follows:

A. Need to collect the information.

Criminal history information. The Director of the Gambling Control Unit must obtain access to state and federal criminal history record information regarding applicants for sports wagering licenses to make an informed decision about the applicant’s suitability for licensure. To protect the public, 8 M.R.S.A. §1205(1) authorizes the director to deny a license if the applicant or a person having control of the applicant “has been convicted of a crime of moral turpitude, a gambling-related offense or a theft or fraud offense or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order.”

Child support registry information. It is necessary for the sports wagering operator to collect personally identifying information from patrons and compare that information to personally identifying information of individuals who are listed in the registry of child support obligors who have outstanding child support debt, to ensure that winnings are intercepted only from persons who owe outstanding child support debt.

Abnormal wagering activity information. The amendment does not require a sports governing body to provide any information to the Director of the Gambling Control Unit. Nevertheless, if provided, this information may be critical to a determination whether particular abnormal wagering activity involves a collaboration between persons placing sports wagers and employees of the sports governing body or others who may be involved in match fixing or other corrupt practices that undermine the integrity of a sports event.

B. Value in maintaining information.

Criminal history information. Maintenance of criminal history record information is essential for the State Bureau of Identification to perform its duties.

Child support registry information. Maintenance of information about individuals with outstanding child support debt is necessary for the child support registry to function.

Abnormal wagering activity information. Maintenance of information about abnormal wagering activity is necessary for the duration of the director’s investigation of that activity and general oversight of the conduct of sports wagering by licensed operators in the State. In addition, it may be necessary for the director to maintain certain information from the sports governing

body—including details of the league’s operations or security protocols—to prevent future conduct that undermines the integrity of sports events conducted by that sports governing body.

C. Federal law.

Criminal history information. As interpreted by the Federal Bureau of Investigation, Pub. L. 92-544, 86 Stat. 1109, 1115 (1972) prohibits the FBI from sharing fingerprint-based national criminal history information “if dissemination is made outside the receiving departments or related agencies.”

Child support registry information and abnormal wagering activity information. We are unaware of a federal law that would require this information to be kept confidential.

D. Balancing the individual’s privacy rights and the public interest.

Criminal history information. The proposed exception protects the privacy interests of applicants for sports wagering licenses and the individuals who have control of those applicants by allowing criminal history background information to be used only for the purposes of determining whether the relevant sports wagering license should be issued and by keeping sensitive fingerprint information confidential. The proposed exception does not affect the public interest in access to publicly-available records of judicial proceedings related to applicants for sports wagering licenses. We believe that this is an appropriate balance of the individual’s interest and the public interest.

Child support registry information. The proposed exception protects the privacy interests of a sports wagering patron by preventing disclosure of personally identifying information—including the patron’s date of birth and social security number—which must be collected to ensure that a patrons’ winnings are not intercepted unless that specific patron owes an outstanding child support debt. The proposed exception does not affect the public interest in access to publicly-available judicial and administrative records involving child support adjudications.

Abnormal wagering activity information. The proposed exception protects a sports governing body’s privacy interest in its confidential league policies and personnel investigations as well as its proprietary interest in details regarding the League’s operations and security protocols. Preventing public disclosure of this information serves the public’s interest by not compromising the details of investigations and may further prevent persons who place sports wagers from utilizing this confidential information to engage in future corrupt practices and patterns of wagers that might undermine the fairness of the sports book. Additionally, this information may include suspected, rather than confirmed violations of the laws and rules governing sports wagering in this State and other jurisdictions. Public access to such preliminary investigative information could result in unwarranted damage to the reputation of an individual or business.

E. Balancing the effect of disclosure on business competition against the public interest.

Criminal history information & child support registry information: We are unaware of any connection between this information and competitive disadvantages of any business in this State.

Abnormal wagering activity information. It may be necessary for the director to request proprietary information from a sports governing body during the course of an investigation into

abnormal wagering activity. Disclosure of this information may theoretically place the sports governing body at a disadvantage with respect to other sports governing bodies.

F. Interfering in public negotiations.

Criminal history information, child support registry information and abnormal wagering information: We are unaware of any connection between this information and negotiations involving a public body.

G. Balancing the public interest and potential jeopardy to public safety or a member of the public.

Please see the response to item D above.

H. Narrowness of the exception.

Criminal history record information: The exception applies only to criminal history background information obtained for the purpose of determining whether an applicant may obtain a sports wagering license. Criminal history information is generally available to the public through public court records; this confidentiality provision does not affect the availability of that information to the public but does prevent public disclosure of the criminal history background information obtained by the Department of Public Safety for a sports wagering license applicant and also prevents public disclosure of the applicant's fingerprint information. We feel that this exception is sufficiently narrow.

Child support registry information: The exception applies only to personally identifying information of winning sports wagering patrons and information about outstanding child support debts—including the personally identifying information of the obligors—stored in the registry. This confidentiality provision does not alter the accessibility of judicial and administrative child support orders retained by the court system and administrative agency. We feel that this exception is sufficiently narrow.

Abnormal wagering activity information. The provision rendering information provided by the sports governing body to the director confidential is narrowly drawn, providing for public disclosure not only when the sports governing body consents to such disclosure but also if disclosure is either "required by the director or by law."

I. Any other criteria that assist the review committee in determining the value of the proposed exception as compared to the public's interest in the record protected by the proposed exception.

Thank you for reviewing this proposed public records exception. Please find copies of LD 1352 and the relevant provision from LD 1527 attached. We look forward to meeting with you.

cc: Members, Joint Standing Committee on Veterans and Legal Affairs
Peggy Reinsch, Legislative Analyst to the Joint Standing Committee on Judiciary